Court of Common Pleas of Philadelphia.

TAYLOR *v.* WINTERS.

No new tenancy is created by a mere agreement for an increase of rent in the middle of the year of the tenancy. The term stands unchanged, by a promise to pay for a balance of a term, more rent than a tenant is required to pay by the contract under which he entered into possession.

Such promise, unless supported by a good consideration, is a *nudum pactum*, and cannot be enforced.

Opinion by ALLISON, P. J.

The judgment of the alderman is based on a clear mistake of the legal effect of a promise made by a tenant during the term to pay an increased rent for premises which he holds as lessee of his landlord. The time originally agreed upon for the term to end, is not shifted or varied by such promise. A modification of a contract of letting, in the single particular of the amount of rent to be paid, does not vary or alter the terms or conditions of the renting as to the time when the term is to begin or end. The agreement remains in all other respects as it was entered into between the lessor and lessee, and such a change is not in law or in fact an abandonment by either of the parties of any other right or duty which one could claim for himself and against the other, under the terms of the original contract.

Why should it be otherwise? The term for which a lessee is entitled to hold demised premises is not dependent upon the *amount* of rent which he is required to pay to his landlord; whether the rent to be paid be more or less, it is of no consequence; that which is essential is, that a consideration should be paid for the use and enjoyment of the property rented by the lessee from the lessor. But if the rent to be paid be a penny, it will as well support the relation of landlord and tenant, and is in law as good a consideration, as if the agreement be to pay $1000 or more. It therefore follows, that the term for which premises were rented, is not a condition or covenant dependent upon the *quantum* of rent which the tenant has promised to pay and the lessor has agreed to accept; but that it may be shifted up or down during the term by the consent of the parties to the contract, without changing the term as first established between them. And of so little value is a mere promise made during a term by a tenant to

give more, or of a landlord to take less rent for an unexpired portion of a term, that unless it be supported by a consideration good in law, it is of no value, it is a mere *nudum pactum*, which could not be enforced. If, however, such promise be properly supported, like any other agreement good in law, it would bind the parties as to that upon which it was intended to operate, and no further. The remaining portions of the contract would stand unaffected by an alteration of the amount of rent to be paid. That which the parties for a sufficient consideration had agreed to change, would be changed, that which the new agreement did not cover would remain. A landlord and tenant may, by mutual consent, alter an agreement in part or in whole, but because they agree to alter it in one particular, it does not follow as a legal consequence that it is to be departed from in any other respect.

This point does not seem to have been adjudicated in Pennsylvania, nor have I been able to find a case anywhere, in which the question has been directly presented for decision. Woodfall on L. & T. 158, 266, 5th London edition, asserts the proposition that no new tenancy is created by a mere agreement for an increase of rent in the middle of a year of the tenancy, and cites *Bedford* v. *Kendrick*, Adams's Ejectment 144, but this case in Adams is stated to have been decided at Warwick Summer Assizes 1810, and is annotated as a MS. case merely, but upon the strength of *Bedford* v. *Kendrick*, and the doctrine as it is found in Woodfall, Adams also asserts the principle to be, that although no new tenancy is created by a mere agreement for an increase of rent in the middle of a year of a tenancy, yet a notice to quit after the receipt of increased rent must expire at the time when the tenant originally entered.

Upon principle, however, without the aid of adjudicated cases, we hold that the alderman erred in supposing that the promise of the defendant, made before his term was ended, to pay an increased rate of rent, which, by the contract under which he went into possession, he was not required to pay, terminated his tenancy at the time at which the increase was to begin, and that a new year then started to run; and as upon this mistake he rested his judgment, it must be reversed.